

ATTACHMENT 3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re: CATHODE RAY TUBE (CRT) ANTITRUST
LITIGATION

Case No. 07-cv-05944 (SC)

MDL No. 1917

This Document Relates To:

Sharp Electronics Corp., et al. v. Hitachi Ltd., et al.,
Case No. C 13-1173 (SC)

**DECLARATION OF KAZUTO
YAMAMOTO IN SUPPORT OF
SHARP'S OPPOSITION TO
TOSHIBA DEFENDANTS' MOTION
TO DISMISS**

1 I, Kazuto Yamamoto, hereby declare as follows:

2 1. My name is Kazuto Yamamoto. I am a licensed attorney at Daiichi Law Office,
3 P.C. in Osaka, Japan. I received my bachelors of law at Kyoto University in 1997 and my LL.M.
4 degree at Northwestern University School of Law in 2008. Since the years 2000 and 2009, I
5 have been a member of the bars of Japan and the state of New York, respectively. I am
6 competent to provide the legal opinions contained herein.

7 2. I have reviewed the Basic Transaction Agreement ("BTA") between Sharp
8 Corporation and Toshiba Corporation, executed in 1977. I have also reviewed the legal
9 arguments of Toshiba Corporation, Toshiba America, Inc., Toshiba America Information
10 Systems, Inc., and Toshiba America Electronic Components, Inc. ("Toshiba Defendants") in
11 their Motion to Dismiss Sharp's Complaint.

12 3. It is my legal opinion that Osaka District Court would not have jurisdiction over
13 Sharp Electronics Corporation and Sharp Electronics Manufacturing Company of America, Inc.
14 (the "Sharp Plaintiffs")'s U.S. antitrust claims against Toshiba Defendants.

15 4. As a threshold matter, under Japanese laws the forum selection clause of the BTA
16 would be applied only to the signatories of the BTA, i.e., Sharp Corporation and Toshiba
17 Corporation, and would not be applied to Sharp Plaintiffs, which are non-signatories of the BTA.
18 As Sharp Corporation and Toshiba Corporation entered into the BTA under Japanese laws, the
19 BTA, including the forum selection clause, would be governed and construed by Japanese laws.
20 Under Japanese laws, a forum selection clause of an agreement would be applied only to
21 signatories of the agreement. I am unaware of any case where a Japanese court has ever applied
22 a forum selection clause to non-signatories of the agreement, including subsidiaries or affiliate
23 companies of signatories of such agreement.

24 5. The forum selection clause of the BTA would not create jurisdiction in the Osaka
25 District Court over Sharp Plaintiffs' U.S. antitrust claims against Toshiba Defendants.

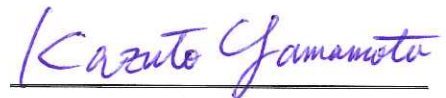
26 6. Even if the Osaka District Court could have jurisdiction over Sharp Plaintiffs'
27 action against the Toshiba Defendants, that court could not award treble damages. Treble
28 damages would not be awarded by any Japanese court, since it is regarded against Japanese

1 public policy. The Supreme Court of Japan has held that a plaintiff can recover only its actual
2 damages but cannot recover damages that are deemed punitive, since it is regarded as a matter
3 against Japanese public policy. Ore. State Union No-so-kon I v. Mansei Ko-gyo Co., 51 Minsu
4 2573 (Sup. Ct., July 11, 1997). This would include treble damages.

5 7. For the foregoing reasons, I conclude that the Osaka District Court would not
6 have jurisdiction over Sharp Plaintiffs' U.S. antitrust claims against Toshiba Defendants.

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8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10 Executed this 3rd day of November, 2013 in Osaka, Japan

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